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7 Attorney for Defendant/Appellant Barbara Dennis

8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF NEVADA
11

12 UNITED STATES OF AMERICA,	)	Case No.: 2:10-cr-00091-KJD-GWF
13)	
14 Plaintiff-Appellee,)	
15)	
16 vs.	)	(1) [UNOPPOSED] MOTION TO PROVIDE
17	)	SEALED DOCUMENTS FOR USE IN
18 BARBARA JEAN DENNIS,	)	PENDING APPEAL; AND
19)	
20 Defendant-Appellant.	)	(2) DECLARATION OF MARK D. EIBERT
21	)	IN SUPPORT THEREOF
22)	

23 I, Mark D. Eibert, declare as follows:

24 1. I am an attorney at law duly admitted to the Bar of this Court, and I am the appointed
25 appellate attorney of record for defendant-appellant Barbara Dennis in Ninth Circuit Appeal No.
26 16-10437. If called as a witness, I could and would testify to the facts recited in this Declaration
27 from personal knowledge.

28 2. Ms. Dennis was orally sentenced to time served for bankruptcy fraud on September
20, 2016; the Judgment was signed on September 30 and entered on the docket on October 4,
2016 (Docket No. 358). Ms. Dennis represented herself pro se during much of the district court
proceedings. Because she was in custody during much of that time, she does not have file-
stamped copies, and in some cases she has no copies at all, of various documents, including
those that were filed under seal and remain under seal, and those that were stricken for various
reasons.

3. On May 3, 2017, undersigned counsel filed an unopposed motion to unseal and
provide certain documents to the defense for use in direct appeal. Docket # 398. The

1 government filed a notice of non-objection with a small suggestion for a wording change to the
2 proposed Order. Docket # 400. On May 5, 2017, the Court granted the motion. Docket # 402.

3 4. Ms. Dennis has pointed out to undersigned counsel that one set of exhibits were filed
4 under seal that were inadvertently not requested in the May 3 motion. Those exhibits were filed
5 under seal along with a motion by Ms. Dennis acting *pro se* on November 30, 2015 (Docket #
6 149). A motion to file those documents under seal was separately filed by Ms. Dennis at Docket
7 # 157. The Court granted the motion to file under seal at Docket # 176, and indicated that it had
8 considered the sealed exhibits in issuing its ruling on the underlying motion, at Docket # 176.

9 5. Like the previously requested documents, undersigned counsel needs to review these
10 exhibits to determine their relevancy to this appeal and, if they prove to be relevant, to file with
11 the Ninth Circuit, which requires file-stamped copies of documents for the Excerpts of Record:

12 6. Filed herewith is a proposed Order allowing the above sealed documents to be
13 provided to appellant's counsel for the use of appellate counsel and appellant only, for the sole
14 purpose of preparing her appeal. The proposed Order further specifies that if counsel deems any
15 of the requested documents relevant to an issue in this appeal, and pursuant to the client's
16 agreement to waive the attorney-client privilege, it shall be filed under seal with the Ninth
17 Circuit if and to the extent permitted by that court's rules, and served on opposing counsel. The
18 Proposed Order specifies that the documents shall be limited to counsel for both parties and the
19 appellant and to this purpose, and prohibits dissemination to anyone else for any other purpose.

20 7. Accordingly, I hereby respectfully request that this Court enter the attached proposed
21 Order as described above.

22 6. Assistant U. S. Attorney Elizabeth O. White has graciously indicated that she does not
23 oppose this motion.

24 I declare under penalty of perjury under the laws of the United States that the foregoing
25 is true and correct to the best of my knowledge and belief. Executed at Half Moon Bay,
26 California on May 22, 2017.

27 ///

28 ///

Respectfully submitted,

/s/ Mark D. Eibert

Mark D. Eibert

Attorney for Defendant-Appellant Barbara Dennis

CERTIFICATE OF SERVICE

The undersigned hereby certifies that his business mailing address is P. O. Box 1126, Half Moon Bay, CA 94019, that he is not a party to this action, that he is a citizen of the United States of such age and discretion to be competent to serve papers, and that on the below date he caused a true and accurate copy of

[PROPOSED] ORDER TO UNSEAL AND PROVIDE DOCUMENTS TO
DEFENDANT/APPELLANT AND HER APPELLATE COUNSEL FOR USE IN PENDING
APPEAL

To be served via ECF on the United States District Court, which will e-serve

Kathryn C. Newman, Esq. Attorney for Plaintiff in the District Court
Assistant U.S. Attorney
501 Las Vegas Blvd. South, Suite 1100
Las Vegas, NV 89101

Elizabeth Olson. White, Esq. Attorney for Plaintiff in the Ninth Circuit
Assistant U.S. Attorney
Chief, Appellate Division
United States Attorney's Office
District of Nevada
100 West Liberty, Suite 600
Reno, Nevada 89501

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on May 22, 2017 at Half Moon Bay, California.

/s/ Mark D. Eibert

Mark D. Eibert
Attorney for Defendant/Appellant

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	Case No.: 2:10-CR-00091-KJD-GWF-1
)	
Plaintiff-Appellee,)	
)	
vs.	)	[PROPOSED] ORDER TO PROVIDE
	)	SEALED DOCUMENTS TO DEFENDANT
BARBARA DENNIS,	)	AND HER APPELLATE COUNSEL FOR
	)	USE IN PENDING APPEAL
Defendant-Appellant.)	
)	

ORDER

Good cause appearing therefore, it is hereby ORDERED as follows:

1. The documents described in the Unopposed Motion to Provide Sealed Documents for Use in Pending Appeal shall be provided to defendant's counsel for the use of the defendant and her appellate counsel, but shall otherwise remain under seal. They shall be used only for the purpose of the preparation and prosecution of Ms. Dennis' appeal.

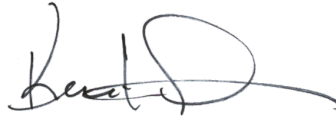
2. Should appellant's counsel deem any such document relevant to any issue in the appeal, and pursuant to the client's agreement to waive the attorney-client privilege, he shall file it under seal with the Ninth Circuit if and to the extent permitted by that court's rules and serve it on opposing counsel.

3. Dissemination of the documents shall be limited to counsel for both parties in the appeal and appellant and solely for the purposes of prosecuting or defending the appeal. Further dissemination to anyone else for any other purpose is prohibited.

1 4. The Clerk's Office shall transmit the requested documents to Mark Eibert, Counsel for
2 Defendant/Appellant Barbara Dennis, P.O. Box 1126, Half Moon Bay, California 94019-1126,
3 Fax (650) 712-8377.

4 IT IS SO ORDERED.

5 Dated: June 26 , 2017

A handwritten signature in black ink, appearing to read 'Kent J. Dawson', is written over a horizontal line.

HON. KENT J. DAWSON
United States District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that his business mailing address is P. O. Box 1126, Half Moon Bay, CA 94019, that he is not a party to this action, that he is a citizen of the United States of such age and discretion to be competent to serve papers, and that on the below date he caused a true and accurate copy of

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on May 22, 2017 at Half Moon Bay, California.

/s/ Mark D. Eibert

Mark D. Eibert
Attorney for Defendant/Appellant